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P.O. BOX 1022  
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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*EX PARTE* JOHN ROZEN

Appeal 2008-3265  
Application 09/757,745  
Technology Center 2400

Oral Hearing Held: December 11, 2008

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY III, and  
CAROLYN D. THOMAS, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

Faustino A. Lichauco, Esquire  
FISH & RICHARDSON, PC  
225 Franklin Street  
Boston, Massachusetts 02110-2804

1           The above-entitled matter came on for hearing on Monday, December  
2   11, 2008, at The U.S. Patent and Trademark Office, 600 Dulany Street,  
3   Alexandria, Virginia, before Janice A. Salas, Notary Public.

4           THE CLERK: Calendar number 33, Mr. Lichauco.

5           MR. LICHAUCO: May it please the Board, my name is Faustino  
6   Lichauco. I represent the assignee of record, Clearly Technologies, in  
7   connection with the appeal. I'd like to drop -- I'd like to draw -- proceed  
8   right away to the claim language at issue.

9           In attempting to determine whether a claim reads on a reference or  
10   whether a reference anticipates a claim, it's useful to identify the players in  
11   the claim and try to see where they are in the reference. In this case it's easy.  
12   There are only three main players in our method claim. We've got the client,  
13   the content server, and the origin server.

14          There's not a lot of dispute about the first two. The client clearly will  
15   correspond to -- let me draw the Board's attention to figure 8, the user  
16   terminal device 10A at the top of the figure. That would be the client.

17          The content server, again there's not much dispute on this. It would  
18   correspond to the information distribution device at the bottom of the figure.

19          The controversy and the question for the Board this afternoon is  
20   where is the origin server that receives a request from the client for a certain  
21   desired content. Now, as best understood from reviewing the examiner's  
22   remarks, the examiner regards this origin server as being the communication  
23   network exchange device, number 20 in the figure.

24          It is true that that device is connected to the client, so there is the  
25   possibility of communication between them, but in our review of Hasebe, it

1 appears to us that that device is simply a router and that in fact it does not  
2 receive a request from the client for desired content.

3 Again, referring to figure 8, I would, if the Board permits, describe --  
4 I'd like to describe how we see the device as working. How we see Hasebe's  
5 -- the system as working. The process begins when the user terminal device  
6 sends a data packet to the router 20. That data packet has along with it a  
7 dotted quad address or an IP address.

8 The router then looks up in its routing table the proper place to send  
9 the data packet.

10 So for example, if the user terminal device wants to send the packet to  
11 the address 192001, which is in the figure, the router looks up in its routing  
12 table and learns any data packet that wants to go to that address must be sent  
13 to router at 40A, and it proceeds to do so, and that would send the data  
14 packet to the router 40A, which is a little further down in the figure.

15 Then that router, which is also called a communication network  
16 exchange device 40, would do the same thing. It looks up in its table where  
17 to send the data packet next, and as one can see, it sees a data packet  
18 intended for 192001 and it sends that to router 60A.

19 Having done that, the data packet now arrives at the bottom of the  
20 page to its final destination, which is the information distribution device  
21 60A.

22 The figure's a little simplified. It shows two layers of routers, but one  
23 can imagine that there might be several layers of routers, each one sent  
24 looking up where to send the data packet and then sending it in the next hop  
25 or next stage of its journey from the client to the content server.

1           So it's apparent from that -- that description of how the Hasebe device  
2 works that there is never a point at which the content serv -- at which the  
3 origin server, namely, the router 20A, would receive a request from a client  
4 for any desired content.

5           JUDGE COURTENAY: As a matter of claim construction, what's the  
6 broadest reasonable construction of an origin server in a manner that's  
7 consistent with your specification? This is the server where an original Web  
8 page is located. Is that your construction or --

9           MR. LICHAUCO: Well, in construing the claim, giving it the  
10 broadest reasonable interpretation, one is supposed to think of how one of  
11 ordinary skill would understand it from the spec, and in the spec we do  
12 describe certain properties of the origin server.

13           For example, in the background, first couple of paragraphs, we talk  
14 about how the origin server contains Web pages.

15           It sends the Web pages to the user. We also clearly distinguish  
16 between origin servers and routers. For example, in the -- I believe on page  
17 1 on line 18 or so we talk about how one of the problems with content  
18 delivery is that the origin server faces router congestion, and this in fact is  
19 one of the -- one of the things that our invention is intended to overcome.

20           So the specification does clearly indicate that there is a difference  
21 between an origin server and simply a -- what is simply a router. There are a  
22 number of other examples of what the origin server has to be from the  
23 specification. It's something that determines which autonomous system  
24 would have the shared content. That's on page 6, lines 14 to 15.

25           It looks up shared addresses of autonomous system. That's on page 6

1 also, line 16. So there's certainly a lot of material that would suggest to one  
2 of ordinary skill in the art that the origin server is not a router. So -- now,  
3 there are a couple of other things that seem to fall apart in the claim when  
4 we understand how Hasebe really works.

5 For example, there is never a step -- the claim requires a step of  
6 providing the client with a shared address in response to the request that was  
7 referred to in the first paragraph of the claim. Well, that never happens  
8 because the client already has the shared address to begin with.

9 JUDGE BARRY: Counsel, where in your briefs does this argument  
10 appear so we can follow along?

11 MR. LICHAUCO: This argument concerning the fact that the shared  
12 address is not provided to the -- to the client is actually one that I discovered  
13 just yesterday.

14 JUDGE BARRY: Okay. We can't consider that, then, counsel, at this  
15 point.

16 MR. LICHAUCO: Well, it's also the case that there -- although there  
17 is an autonomous system, it does not have content servers that have a copy --  
18 that each have a copy of the desired content. I believe this argument was  
19 raised in the brief.

20 The closest thing to an autonomous system -- I'm talking now about  
21 the claim limitation in response to the request identifying an autonomous  
22 system having content servers, each of which has a copy of the desired  
23 content, that limitation.

24 The closest thing in Hasebe to an autonomous system would be the  
25 three information distribution devices, 60A through 60B -- 60C. Those all

1 have the same identical communication terminal ID; however, there is no  
2 indication that those -- those structures, those information distribution  
3 devices actually have the same content.

4 JUDGE BARRY: Once again, counsel, I'll ask you that question.  
5 Where does the argument about the same content appear in your briefs?

6 (Pause in the proceedings.)

7 MR. LICHAUCO: Right on page 10 we discuss the autonomous  
8 system.

9 JUDGE BARRY: This is 10 of the --

10 MR. LICHAUCO: Of the --

11 JUDGE BARRY: -- supplemental brief?

12 MR. LICHAUCO: It's entitled -- it's entitled Brief on Appeal.

13 JUDGE BARRY: Okay. The brief on appeal is no longer before us.  
14 That was replaced by supplemental brief on appeal.

15 MR. LICHAUCO: Oh, really?

16 JUDGE BARRY: Yes, so that's, for all intents and purposes, not part  
17 of the record anymore. It was defective.

18 MR. LICHAUCO: So it appears, then, that we would not be able to  
19 rely on that particular missing feature in Hasebe.

20 JUDGE BARRY: Right.

21 MR. LICHAUCO: Is that the case?

22 JUDGE BARRY: That's correct.

23 MR. LICHAUCO: All right. So we have basically two arguments  
24 which are of record, and these relate to whether or not the Hasebe system  
25 discloses an origin server, and if so, whether or not that origin server carries

1 out the function recited in the first full paragraph of claim 1.

2 Those in themselves are sufficient to distinguish this claim from the  
3 prior art without the additional -- without having to consider the fact that the  
4 reference does not have a number of other limitations.

5 So that's pretty much what I'd like to rest the appeal on. The fact that  
6 Hasebe does not teach an origin server as that term would be understood by  
7 one of ordinary skill in the art. All it teaches is a router.

8 In fact, what it teaches is a whole system of routers that direct a data  
9 packet from one place to another. There is no communication back to the --  
10 back to the client from the alleged origin server.

11 JUDGE BARRY: Any questions?

12 MR. LICHAUCO: Are there any questions?

13 JUDGE COURTENAY: Well, even if we adopted a broader  
14 construction construing a server, an origin server, as broadly a provider of  
15 services, it's still your position that the router is not an origin server, the  
16 router in the reference there?

17 MR. LICHAUCO: Yes. There are two separate and independent  
18 arguments. First, is the origin server -- sorry -- is the network exchange  
19 device or router, can that reasonably be construed as an origin server, and  
20 secondly, if so, does it in fact carry out the function of receiving a request  
21 from a client for desired content.

22 Now, in -- I might draw attention to the fact that the case that talks  
23 about the broadest reasonable interpretation is actually talking about the  
24 broadest reasonable interpretation of the claim as a whole and not to  
25 individual claim terms, so in considering that and in considering the extent

1 of origin server, I would ask the Board to note that.

2 JUDGE BARRY: Thank you for your time.

3 MR. LICHAUCO: Thank you.

4 JUDGE BARRY: We're off the record.

5 (Whereupon, the proceedings were concluded on December 11,

6 2008.)